

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STANDARD FIRE INSURANCE COMPANY,
Plaintiff

VS.

DOCKET NO. 04-12244 GAO

CROSBY YACHT YARD, INC. and
OYSTER HARBORS MARINE, INC.,
Defendants

ACE AMERICAN INSURANCE COMPANY,
FEDERAL INSURANCE COMPANY,
INSURANCE COMPANY OF NORTH AMERICA,
MARYLAND CASUALTY COMPANY,
NORTHERN INSURANCE COMPANY, SOLDIER
OF FORTUNE CORPORATION, DIANE L.
COMOLETTI, and JAMES F. CLEARY,
Plaintiffs

VS.

DOCKET NO. 04-12252-GAO

CROSCY YACHT YARD, INC. and
OYSTER HARBORS MARINE, INC.,
Defendants

OYSTER HARBORS MARINE BUSINESS TRUST,
as successor in interest to, OYSTER HARBORS
MARINE, INC.
and
HANOVER INSURANCE COMPANY,
as subrogee of RICHARD P. MCCOY
and
GLENS FALLS INSURANCE COMPANY,
as subrogee of ALFRED & HELEN CALLAHAN III,
Plaintiffs

VS.

DOCKET NO. 05-10203- GAO

CROSBY YACHT YARD, INC.,
Defendant

ONE BEACON AMERICA INSURANCE COMPANY,
Plaintiff

VS.

DOCKET NO. 05-10363-GAO

CROSBY YACHT YARD, INC.,
Defendant

**OYSTER HARBORS MARINE, INC.'S MOTION FOR SUMMARY JUDGMENT
(FED.R.CIV.P. RULE 56(b))**

Now comes the Oyster Harbors Marine, Inc. in the above-captioned matter and moves this court for judgment in its favor as to all claims and crossclaims alleged as against Oyster Harbors Marine, Inc. As grounds therefore, Oyster Harbors Marine, Inc. states:

1. This case is a consolidated matter involving numerous claims, lawsuits, claims and lawsuits all of which have been consolidated by order of this court on February 3, 2006 under Docket No. 04-CV-12244.
2. Oyster Harbors Marine, Inc. has been sued by the plaintiffs, Ace American Insurance Company, Federal Insurance Company, Insurance Company of North America, Maryland Casualty Company and Northern Insurance Company under original docket 04-CV-12252. Oyster Harbors Marine, Inc. has also been sued by Standard Fire Insurance Company under original docket no. 04-CV-12244.
3. As to the suits against Oyster Harbors Marine, Inc. seeking damages, the claims brought by the plaintiffs in the above-captioned paragraph are all essentially the same. Each plaintiff brings claims against Oyster Harbors Marine, Inc. in bailment (Ace American case Count II) (Count II Standard Fire case); negligence (Ace American Insurance case Count IV) (Standard Fire case Count IV); breach of contract (Ace American Insurance case Count V); breach of warranty (Ace American Insurance case Count VII); negligence – *res ipsa loquitor* (Ace American Insurance case Count IX).
4. All of the claims brought against Oyster Harbors Marine, Inc. arise out of a fire which occurred on an adjacent property owned by the co-defendant, Crosby Yacht Yard on December 10, 2003 which fire spread to Oyster Harbors Marine, Inc.
5. All of the claims brought against Oyster Harbors Marine, Inc. are as the result of damage to boats and other property on the premise of Oyster Harbors Marine, Inc. at the time of the fire, December 10, 2003.
6. Each of the owners of the boats and/or property which was destroyed or damaged by the fire had placed their boat and/or property on the premise of Oyster Harbors Marine, Inc. pursuant to a “2003–2004 Storage Agreement” (See attached Exhibit 1 – copies of 2003-2004 Storage Agreement).
7. Each of the 2003-2004 Storage Agreements contained the same paragraph No.5 which provides:

“That the yard does not carry any insurance on the stored property and will not be held responsible or liable for any damage or loss to, or of, the property listed herein or any other property or gear stored therein, and the Owner will obtain his

own insurance and will hold the Yard, its Agents and Employees, harmless and free from all loss or claims arising out of the presence of the Owner's said property upon the Yard's premises."

8. Since each of the boat/property owners who had damage or destruction to their property on the premise of Oyster Harbors Marine, Inc. had agreed that they would provide insurance for their property and would hold harmless Oyster Harbors Marine, Inc. from any claim for damage or destruction thereto Oyster Harbors Marine, Inc. is entitled to judgment as a matter of law.

WHEREFORE, Oyster Harbors Marine, Inc. moves this court to enter judgment as a matter of law in its favor. Oyster Harbors Marine, Inc. further relies upon the attached memorandum of law and exhibits.

Respectfully submitted,

/s/ John H. Bruno II
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